

No. 12472

United States
Court of Appeals
for the Ninth Circuit.

ESTATE OF HARRY J. WOLF, Deceased, by
Monte L. Wolf, Administrator, de bonis non
with the will annexed of said estate,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

APR 5 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Tax Court of the United States

T. C. Docket No. 14,209

HARRY J. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions the above entitled court for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, (Bureau Symbols IT:90D:DLA) dated March 3, 1947, and as a basis of his proceeding alleges as follows:

I.

The petitioner is an individual residing at 3111 S. E. Lambert Street, Portland, Oregon. The returns for the periods here involved were filed with the Collector for District of Oregon. Petitioner made and executed said returns as H. J. Wolf and said Notice of Deficiency was addressed to him as H. J. Wolf for the reason he ordinarily uses only his initials in the transaction of business.

II.

The Notice of Deficiency (a copy of which is attached and marked Exhibit A) was mailed to the

petitioner from Seattle, Washington, under date of March 3, 1947.

III.

The taxes in controversy are income taxes for the calendar years 1942 and 1943 and in the amount of \$151,049.05.

IV.

The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner erred in refusing to recognize that Jennie Wolf was a partner in the Alaska Junk Company during the Calendar years 1942 and 1943 with an interest therein equal to that of the petitioner.

(b) The Commissioner erred in including an additional \$54,030.87 in petitioner's income for the calendar year 1942 as a result of his refusal to recognize Jennie Wolf as a partner in The Alaska Junk Company.

(c) The Commissioner erred in disallowing as a deduction of the Alaska Junk Company in the calendar year 1943, the sum of \$202,350.60 as (1) a bad debt owed to the Alaska Junk Company by the Oregon Electric Steel Rolling Mills which became worthless in said calendar year, or (2) a loss deductible under the provisions of Sec. 23 (e), I.R.C.

(d) The Commissioner erred in including an additional \$157,689.24 in petitioner's Income Tax

Net Income and in his Victory Tax Net Income for the calendar year 1943 as a result of his refusal to recognize the said Jennie Wolf as a partner in the Alaska Junk Company and his said disallowance of the said sum of \$202,350.60 as a deduction of the Alaska Junk Company. (The refusal to recognize the said partnership interest of Jennie Wolf having the effect of increasing petitioners said income for said calendar year by the sum of \$56,513.94, and his disallowance of the said deduction having the affect of increasing his said income of said calendar year by the sum of \$101,175.30.)

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

Re Partnership

(a) At and during the calendar years 1942 and 1943, and for a great many years prior thereto, the petitioner, Jennie Wolf, Sam Schnitzer and Rose Schnitzer were co-partners under the names and styles of The Alaska Junk Company and Schnitzer-Wolf Machinery Company, and as such co-partners were engaged in the business of buying, selling and generally dealing in junk, new and second hand pipe, tools, machinery, hardware, metal and metal products of every character, and in the business activities hereinafter mentioned, and the principal place of business of said partners was in Portland, Oregon. During all said times each of the said per-

sons owned a one-quarter interest in the business and property of said partnership.

(b) The Commissioner refused to recognize that Jennie Wolf and Rose Schnitzer were partners in the said business in the calendar years 1942 and 1943 although he had recognized them as such partners for many years prior thereto, and their interests and shares in said partnership were exactly the same in the calendar years 1942 and 1943 as their interests and shares therein throughout all the years in which the Commissioner did recognize and treat them as partners in said partnership.

(c) Petitioner and Jennie Wolf were intermarried June 16, 1907, and were husband and wife at all times from said date until the death of Jennie Wolf April 8, 1945.

(d) When the petitioner was married he was 23 years of age, had only been in the United States about two years, could speak very little English, was virtually a stranger in Portland, Oregon, and possessed very little information about American business practices. His wife, Jennie Wolf, was educated in Portland, Oregon, and at the time of her marriage to the petitioner she had acquired a good deal of information about business establishments in Portland, Oregon, and about the business of buying and selling second hand goods.

(e) At the time of his said marriage petitioner had in a neighborhood of \$500 or \$600. His wife,

Jennie Wolf, had received \$500 as a wedding present from her father. Immediately after their marriage the petitioner and his wife entered into the business of buying and selling junk and second hand merchandise. Petitioner contributed his said \$500 or \$600 to the capital of said business, and his wife contributed thereto the said sum of \$500, which she had received from her father. The Petitioner and his wife continued in said business from June, 1907, until late in 1911 during which period petitioner's said wife performed valuable services in and to the business mentioned in this paragraph, which services, among other things, consisted of the said Jennie Wolf laying out routes for the petitioner to canvas with a horse and wagon purchased with the said funds, taking part in the management and control of the business, causing a phone to be installed for the use of the business, and in conducting transactions for the said business over the said phone.

(f) Sometime late in the year 1911 petitioner and Sam Schnitzer engaged in a joint adventure in purchasing and disposing of some salvage material being removed from the Portland Hotel. This joint adventure lead to the formation of The Alaska Junk Company.

(g) February 3, 1912, the petitioner, Sam Schnitzer and one Sam Horwitz caused the Alaska Junk Company, to be organized as a corporation under the laws of the State of Oregon with a capital stock of \$5000.00, divided into five shares of a

par value of \$1000 each, and petitioner transferred to said corporation a stock of junk and second hand merchandise of a reasonable value of \$1000.00 in payment for one share of capital stock of said corporation, and Sam Schnitzer transferred junk and second hand merchandise of an equal reasonable value for one share of said capital stock. Sam Horwitz subscribed for but did not completely pay for one share of the capital stock in said corporation. The petitioner and Sam Schnitzer, each paying equal amounts, purchased the interest of Sam Horwitz in said share of capital stock for which he had subscribed.

(h) On April 12, 1912, said corporation was duly dissolved pursuant to a resolution adopted on March 26, 1912, by its board of directors, and its assets were taken over by petitioner and Sam Schnitzer, with equal interests therein, and thereupon they entered into an oral partnership agreement pursuant to which they became partners, with equal interests, under the name and style of The Alaska Junk Company, for the purpose of engaging in the business of buying, selling and generally dealing in junk, pipe and new and second hand tools, hardware, metal and metal goods of every character.

(i) The merchandise transferred by petitioner to said corporation for his share of the said capital stock was purchased by him with the capital and earnings of said business to which Jennie Wolf contributed her money and services as aforesaid, and

the money which the petitioner contributed for said purchase of the interest of Sam Horwitz in the capital stock of said corporation came out of the capital and earnings of said business and/or from earnings of said corporation which Jennie Wolf had assisted in accumulating.

(j) When the partnership last mentioned was organized petitioner and Sam Schnitzer each entered into an agreement with their respective wives whereby the interest of each said wife in said partnership was recognized and fixed as being equal to that of her husband, and whereby it was agreed that each said wife should continue to aid and assist in accumulating money to be retained in the business as capital.

(k) - The said partnership business was continuously carried on pursuant to the agreements set forth in paragraph V (h) and V (j) until January 3, 1928, when it was decided by the petitioner, Jennie Wolf, Sam Schnitzer and Rose Schnitzer that they would enter into a formal written partnership agreement, and on the date last mentioned said persons did enter into such an agreement whereby it is provided that the interest of each of the said persons in said partnership should be an equal undivided one-quarter interest and that each of them should be entitled to share equally in the profits and losses of the business, and that the partners should be allowed to draw wages for their services out of the partnership business, which wages should

be considered as a business expense, and that after deducting all business expenses, including wages paid to petitioner and said Sam Schnitzer, the net profits, if any, should be divided into four equal portions and paid to each of the said co-partners, and the losses, if any, should likewise be borne equally.

(l) That said written partnership agreement remained in force and effect from the date it was executed, as aforesaid, to and including the calendar years 1942 and 1943.

(m) Although said written partnership agreement was not executed until said 3rd day of January, 1928, all of the said parties thereto on many occasions from 1912 to the date of said partnership articles reaffirmed their original agreements mentioned in paragraph V (j), and pursuant to said original agreements said wives continued to assist the petitioner and Sam Schnitzer in accumulating money to be retained in the said business as capital; and at all times from the beginning of said partnership in April, 1912, to and including the calendar years 1942 and 1943 Jennie Wolf counseled with and assisted the petitioner in dealing with the problems and affairs of said partnership.

(n) During the calendar years 1942 and 1943 and for many years prior thereto petitioner and Sam Schnitzer drew salaries from said partnership and the same were deducted as business expenses of the partnership prior to any division of the remain-

ing profits by the partners, and said salaries were in compensation to petitioner and Sam Schnitzer for their personal services rendered to the said partnership.

Re Bad Debt Loss

(o) At and during all the times hereinafter mentioned the Oregon Electric Steel Rolling Mills, hereinafter called the corporation, was a corporation having an authorized capital stock of 2500 shares consisting of common stock of a par value of \$100.00 each, and the petitioner and Sam Schnitzer each subscribed to a portion of the capital stock, which portion was subsequently issued and thereupon immediately reissued so as to divide it equally among petitioner, Jennie Wolf, Sam Schnitzer and Rose Schnitzer. Thereafter additional stock was issued in substantially equal amounts to each of the four persons last mentioned. Said corporation was fully paid for all said stock. The balance of the issued stock of said corporation was owned by other persons, Morris Schnitzer, son of Sam Schnitzer and Rose Schnitzer, owned all of the said balance except three shares.

(p) The said partnership composed of petitioner, Jennie Wolf, Sam Schnitzer and Rose Schnitzer is hereinafter referred to as The Alaska Junk Company. Said Morris Schnitzer at and during all times hereinafter mentioned was engaged in Portland, Oregon, in the business of buying and

selling new and used iron, steel, tools and machinery and conducted such business under the name and style of the Schnitzer Steel Products Co.

(q) In addition to the business activities mentioned in paragraph V (a) The Alaska Junk Company during 1942 and 1943 and for many years prior thereto was engaged in the business of promoting and financing business enterprises of a nature related to the activities of said partnership enumerated in said paragraph V (a).

(r) In the course of its business The Alaska Junk Company between October 22, 1941, and November 22, 1943, on an open account, at the instance and request of said corporation, advanced money to said corporation, either directly or by making payments on its account to its creditors, purchased and furnished it with merchandise charging the cost thereof to it, and sold goods, wares and merchandise to it at the regular prices charged by The Alaska Junk Company to the trade in general. On November 26, 1943, the balance due and owing to The Alaska Junk Company from said corporation on said open account was \$428,132.13.

(s) In consideration of said open account being credited with the sum of \$174,000.00 the said corporation made, executed and delivered to The Alaska Junk Company one hundred seventy-four (174) First Debentures (unsecured) in the total amount of \$174,000.00, bearing interest at 8% per annum, and on July 14, 1943, said Alaska Junk Company

credited said open account with said amount of \$174,000.00, and charged its "Stocks and Bonds" account with a like sum. For a valuable consideration seventy-five (75) such debentures in the sum of \$75,000.00 were also executed and delivered by said corporation to Morris Schnitzer. No payments of either principal or interest were ever made on any of said debentures.

(t) Soon after the organization of said corporation, The Alaska Junk Company and Morris Schnitzer entered into a contract of guaranty whereby it was agreed that in the event a loss should be sustained by The Alaska Junk Company as a result of its extending credit to said corporation, Morris Schnitzer would pay to The Alaska Junk Company so much of any such loss as should exceed two-thirds of the total combined losses of himself and The Alaska Junk Company sustained on account of the extension of credit to said corporation by himself and The Alaska Junk Company, and a corresponding guaranty was made by The Alaska Junk Company to Morris Schnitzer to the extent of one-third of the total combined losses of said parties sustained through the extension of credit to said corporation.

(u) The idea for the establishment of said corporation was conceived by Morris Schnitzer and from its inception to July 17, 1943, he acted as its president and manager. On said date he was inducted into the armed services of the United States

and this left the corporation without a directing head sufficiently informed and capable of carrying out the purposes of the corporation. Extended and repeated efforts were made to secure a suitable manager to take his place. None could be found. None of the remaining stockholders of said corporation or partners of The Alaska Junk Company were able to properly manage the plant. Its operation bogged down. There was a \$678,843.70 mortgage against its real estate. It owed \$149,650.00 for which its inventories were security, and in addition to the sums it owed The Alaska Junk Company and Morris Schnitzer, it owed \$190,684.06 on open accounts. It lost money, became unable to pay its debts, and it became apparent that it would be impossible for it to carry on and operate profitably. Thereupon many industrialists of large financial ability were solicited in repeated efforts to find some person or organization that would take over the interests of The Alaska Junk Company and Morris Schnitzer in said corporation under such terms as would save them from loss, or at least, under terms that would result in as little loss to them as possible. Including those solicited were Kenneth B. Hall and A. M. Mears, then of the Hesse-Ersted Iron Works. After extended negotiations an agreement was made by and between said Hall, Mears, The Alaska Junk Company, and Morris Schnitzer, by his attorney-in-fact Sam Schnitzer, whereby said Hall and Mears agreed to purchase the outstanding stock of said corporation

at a nominal sum and thereafter to cause said corporation to execute and deliver a promissory note to the petitioner, Jennie Wolf, Sam Schnitzer, Rose Schnitzer and Morris Schnitzer in the sum of \$249,000.00 to be secured by a second mortgage upon its properties in payment of all said debentures, and to execute and deliver a promissory note to said persons in the sum of \$151,000.00 secured by a third mortgage upon said properties in compromise and full payment of the balance due on said open account and in complete satisfaction of a debt of \$26,493.77 then due and owing from said corporation to Morris Schnitzer. The Alaska Junk Company entered into said agreement for the reason that it gave The Alaska Junk Company the best opportunity it could find to realize the greatest possible amount on the obligations owed to it by said corporation.

(v) As evidence of the correct balance due The Alaska Junk Company on its said open account a demand promissory note in the amount of said balance was executed and delivered by said corporation to The Alaska Junk Company, and as evidence of the correct amount of said debt owed by said corporation to Morris Schnitzer a demand promissory note in the amount of said debt was executed and delivered by said corporation to Sam Schnitzer, the attorney-in-fact for Morris Schnitzer.

(w) On November 26, 1943, subsequent to the execution and delivery of the demand notes mentioned in paragraph V (v), all of the issued stock

of said corporation was sold to said Hall and Mears and transferred to them or their order pursuant to the agreement mentioned in paragraph V (u); and thereafter said corporation executed and delivered promissory notes and a second and a third mortgage, and the same were accepted by The Alaska Junk Company and Morris Schnitzer, by his said attorney-in-fact, all in accordance with said agreement.

(x) Upon the receipt of said promissory note and second mortgage for the amount of \$249,000.00 all of the said debentures were returned to the said corporation as fully paid and satisfied, and The Alaska Junk Company credited its said open account with \$142,200.33, which was its pro-rata share of the said promissory note and third mortgage for \$151,000.00, and pursuant to said guaranty agreement charged Morris Schnitzer with \$83,581.20 and credited said open account with an equal amount, thereby reducing the balance of said open account to \$202,350.60, which balance became worthless within the calendar year 1943, because under the terms of the settlement with said corporation embodied in the agreement mentioned in paragraph V (u) no further amount could be realized on said unpaid balance from the corporation, and the said sum of \$83,581.20 was the entire amount for which Morris Schnitzer was liable under the said guaranty. On December 31, 1943, The Alaska Junk Company charged off the said balance as a bad debt, and nothing has since been received thereon.

(y) On account of the matters and things hereinabove stated The Alaska Junk Company sustained a bad debt or business loss in the calendar year 1943 in the sum of \$202,350.60.

(z) The Commissioner arbitrarily considered that the said unpaid and worthless balance of \$202,350.60 represented a contribution by The Alaska Junk Company to the capital of said corporation. There was no intention at any time by the petitioner, or any of the other partners, that the said amount, or any portion thereof, should be a capital contribution to said corporation, but on the contrary it was the intention of The Alaska Junk Company that it was extending credit and that the full balance shown by its said open account would be repaid to it by said corporation.

Wherefore, the petitioner prays that this Court may hear this proceeding and determine that the petitioner has paid his tax in full for the calendar years in question and that there is no deficiency in income tax and/or victory tax due from the petitioner for the said years, and prays for such further relief as may be necessary and proper in the premises.

/s/ ROBT. T. JACOB,
Counsel for Petitioner.

State of Oregon,
County of Multnomah—ss.

Harry J. Wolf, being first duly sworn, says that he is the petitioner above named, that he has had

the said petition read to him, and is familiar with the statements contained therein, and that the statements contained therein are true.

/s/ HARRY J. WOLF.

Subscribed and sworn to before me this 24th day of May, 1947.

[Seal] /s/ J. F. JOHNSON,
Notary Public for Oregon.

My commission expires March 28, 1951.

Received and filed May 26, 1947.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

March 3, 1947

Office of Internal Revenue Agent in Charge, Seattle
Division, 305A 1331 Third Avenue Building

IT:90D:DLA

Mr. H. J. Wolf
3111 S.E. Lambert
Portland, Oregon

Dear Mr. Wolf:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1943 discloses a deficiency of \$151,-049.05 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington for the attention of IT:90D:DLA. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner,

By /s/ S. R. STOCKTON,

Internal Revenue Agent

in Charge.

DLA :mts

Enclosures:

Statement

Form of waiver

Statement

IT:90D:DLA

Mr. H. J. Wolf
3111 S. E. Lambert
Portland, Oregon

Tax liability for the taxable year ended December 31, 1943.

	Deficiency
Income Tax	\$151,049.05

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated June 3, 1946, to your protest dated October 23, 1946 and to the statements made at the conference held on January 22, 1947.

A copy of this letter and statement has been mailed to your representative, Robert T. Jacob, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by return	\$ 59,354.01
Unallowable deductions and additional income:	
(a) Income from partnership	54,030.87
Total	<u>\$113,384.88</u>
Nontaxable income and additional deductions:	
(b) Contributions	723.04
Net income adjusted	<u>\$112,661.84</u>

Explanation of Adjustments

(a) It has been determined from an examination of the 1942 return filed by the partnership, Alaska Junk Co., that your distributive share of the income of that partnership was \$118,061.73. Reported on the return, \$64,030.86. Additional income from partnership, \$54,030.87.

(b) It has been determined that your share of contributions made by the partnership, Alaska Junk Co., is \$1,446.08. Deducted on the return, \$723.04. Additional deduction allowed \$723.04.

Mr. H. J. Wolf

Statement

Computation of Tax

Net income, adjusted	\$112,661.84
Less: Personal exemption	1,200.00
Surtax net income	\$111,461.84
Less: Earned income credit	1,400.00
Balance subject to normal tax	\$110,061.84
Normal tax at 6 percent on \$110,061.84 \$	6,603.71
Surtax on \$111,461.84	68,194.85
Total tax	\$ 74,798.56

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	\$ 61,772.85	\$ 66,968.51
Unallowable deductions and additional income:		
(a) Income from partnership	157,689.24	157,689.24
Total	\$219,462.09	\$224,657.75
Nontaxable income and additional deductions:		
(b) Contributions	981.09	
Net income adjusted	\$218,481.00	\$224,657.75

Explanation of Adjustments

(a) It has been determined from an examination of the 1943 return filed by the partnership, Alaska Junk Co., that your distributive share of the income of that partnership was \$224,203.16. Reported on the return \$66,513.92. Additional income from partnership, \$157,689.24.

(b) It has been determined that your share of contributions made by the partnership, Alaska Junk Co., is \$1,962.18. Deducted on the return, \$981.09. Additional deduction allowed, \$981.09.

Mr. H. J. Wolf

Statement

Computation of Income and Victory Tax

Income tax net income, adjusted	\$218,481.00
Less: Personal exemption	1,200.00
Surtax net income	\$217,281.00
Less: Earned income credit	1,400.00
Balance subject to normal tax	\$215,881.00
Normal tax at 6 percent on \$215,881.00..\$	12,952.86
Surtax on \$217,281.00	153,310.42
Total income tax	\$166,263.28
Victory tax net income adjusted	\$224,657.75
Less: Specific Exemption	624.00
Income subject to victory tax	\$224,033.75
Victory tax before credit, 5% of \$224,033.75	\$ 11,201.69
Less: Victory tax credit	500.00
Net victory tax	10,701.69
Net income tax and victory tax	\$176,964.97
Income tax for 1942	\$ 74,798.56
Amount of net income tax and victory tax	176,964.97
Forgiveness feature:	
(a) Amount of Income tax for 1942....\$	74,798.56
(b) Amount forgiven ($\frac{3}{4}$ of (a))	56,098.92
(c) Amount unforgiven	18,699.64
Total income and victory tax liability	\$195,664.61
Income and victory tax liability disclosed by return Account No. 353532	44,615.56
Deficiency in income and victory tax	\$151,049.05

Received and filed May 26, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Acting Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, denies and alleges as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits that the taxes in controversy are, in part, income taxes for the calendar years 1942 and 1943, and that the amount of tax so in controversy is, to wit: \$151,049.05. Denies the remaining allegations contained in paragraph III of the petition. Alleges that said amount, to wit: \$151,049.05, consists, in part, of victory tax for the year 1943, and that by reason of the forgiveness feature of section 6 of the Current Tax Payment Act of 1943, he, the Commissioner, has determined a deficiency in income and victory tax only for the year 1943.

IV(a) to (d), inclusive. Denies that he erred in his determination of the deficiency as shown by the notice of deficiency from which petitioner's appeal

is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV(a) to (d), inclusive, of the petition.

V(a). Denies the allegations contained in paragraph V(a) of the petition.

(b). Admits his refusal to recognize that Jennie Wolf and Rose Schnitzer were partners in said business in the calendar years 1942 and 1943. Denies the remaining allegations in paragraph V(b) of the petition.

(c). Admits that petitioner and Jennie Wolf were intermarried and were husband and wife at all times during the taxable years 1942 and 1943, and until the death of Jennie Wolf on April 8, 1945. For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph V(c) of the petition.

(d) to (i), inclusive. For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(d) to (i), inclusive, of the petition.

(j) to (n), inclusive. Denies the allegations contained in paragraph V(j) to (n), inclusive, of the petition.

(o). For lack of sufficient information or knowledge upon the basis of which to form a belief as to

the truth or falsity thereof, denies the allegations contained in paragraph V(o) of the petition.

(p). For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(p) of the petition. Specifically denies that Jennie Wolf and Rose Schnitzer were partners in the business known and carried on under the name of the Alaska Junk Company.

(q) to (x), inclusive. For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(q) to (x), inclusive, of the petition.

(y). Denies the allegations contained in paragraph V(y) of the petition.

(z). Admits that he, the Commissioner, considered the balance of \$202,350.60 as a capital investment. Denies the remaining allegations contained in paragraph V(z) of the petition.

VI. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied and that the Commissioner's determination of deficiency be approved.

/s/ CHARLES OLIPHANT,

JHP

Acting Chief Counsel, Bureau
of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel,

JOHN H. PIGG,

R. G. HARLESS,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed Aug. 7, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

MOTION FOR ORDER GRANTING
PERMISSION TO AMEND PETITION

Comes now the petitioner in the above entitled cause by Robt. T. Jacob, his counsel of record, and moves the Court for an order permitting him to amend his petition by adding to paragraph V of said petition immediately after sub-paragraph (n) of paragraph V a sub-paragraph to be designated (n.1) in form and substance as follows:

(n.1) During the year 1944 the petitioner instituted proceedings in the Tax Court of the United States against the Commissioner of Internal Rev-

enue by filing in said court a petition, docket number 6262 appealing from a purported deficiency in income taxes for the calendar year 1941, in which petition the petitioner, among other things, alleged:

“(a) Petitioner is a member of the partnership of Alaska Junk Company, which said partnership is composed of four individuals, H. J. Wolf, Mrs. J. Wolf, S. Schnitzer and Mrs. R. Schnitzer, each owning a one-fourth interest therein.”

The Commissioner of Internal Revenue filed his answer to said petition in said court and in his answer admitted the above quoted allegation. Docket numbers 6263, 6264 and 6265 were similar proceedings instituted respectively by Jennie Wolf, Sam Schnitzer and Rose Schnitzer, and in the petitions in each of these dockets there was an allegation similar to the one above quoted, and in answer to each said petition the Commissioner admitted said allegation. Thereafter the said proceeding docket number 6262, and the related dockets 6263, 6264 and 6265 were consolidated for trial and tried by the said Tax Court of the United States, and on or about the 23rd day of December, 1946, the said Tax Court of the United States made and entered findings of fact and its opinion, in which findings of fact the said court found:

“The petitioners are husbands and wives and members of a co-partnership, doing business under the firm name and style of Alaska Junk Company at Portland, Oregon. Each petitioner had a one-fourth interest in the firm. They filed individual

income tax returns with the collector of internal revenue for the district of Oregon.

The partnership, Alaska Junk Company, was originally organized by petitioners, H. J. Wolf and S. Schnitzer, in 1911. Its business was the buying and selling of all sorts of salvage metals and materials. The original partnership continued until 1925 or 1926 when the wives of the partners, petitioners Jennie Wolf and Rose Schnitzer, were taken into the firm. That partnership is still in existence except that petitioner Jennie, the wife of H. J. Wolf, died in April 1945."

On or about the 24th day of September, 1946, the said Court entered its decisions in each of the said causes and each of the said decisions, less formal parts, date, seal and signature, is as follows:

"Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered Sept. 23, 1946, it is

Ordered and Decided: That there is no deficiency in income tax for the calendar year 1941."

That the findings and decision in docket 6262 was a final adjudication in favor of the petitioner and against the Commissioner of Internal Revenue. Petitioner is named in said docket 6262 as H. J. Wolf. The interest of the petitioner, Sam Schnitzer, Rose Schnitzer and Jennie Wolf in said Alaska Junk Company were exactly the same in the calendar years 1942 and 1943 as in the year 1941, and the fact that each of the said persons has said inter-

ests in said partnership during said years has become res judicata and the respondent ought to be and is estopped to deny the same.

/s/ ROBT. T. JACOB,

Counsel for Petitioner.

Granted June 10, 1948.

/s/ LUTHER A. JOHNSON,

Judge.

Filed June 10, 1948, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER TO AMENDMENT TO PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amendment to petition filed by the above-named petitioner admits and denies as follows:

V-(n.1). Admits the allegations contained in subparagraph (n.1) of paragraph V of the petition except that it is denied that the findings and decision in Docket 6262 was a final adjudication in favor of the petitioner and against the Commissioner of Internal Revenue; that the interest of the petitioner, Sam Schnitzer, Rose Schnitzer and Jennie Wolf in said Alaska Junk Company were exactly the same in the calendar years 1942 and 1943 as in the year 1941, and the fact that each of

the said persons has said interests in said partnership during said years has become res judicata and the respondent ought to be and is estopped to deny the same.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel,

JOHN H. PIGG,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

Received and filed July 28, 1948, T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 14,209

ESTATE OF HARRY J. WOLF, Deceased, by
MONTE L. WOLF, the Executor of said
Estate,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to Opinion of the Tax Court promulgated July 14, 1949, the respondent filed a computation on October 6, 1949, and the petitioner, on November 7, 1949, filed an acquiescence in the computation as filed by the respondent. Now, therefore, it is

Ordered and Decided: That there is a deficiency in income and victory tax due from this petitioner for the calendar year 1943 in the amount of \$43,282.

/s/ LUTHER A. JOHNSON,
Judge.

Entered Nov. 9, 1949.

Served Nov. 10, 1949.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 14,209

ESTATE OF HARRY J. WOLF, Deceased, by
MONTE L. WOLF, Administrator de bonis
non with the will annexed of said Estate,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Comes now the petitioner, by his attorneys of
record, and respectfully shows this Honorable
Court:

I.

The petitioner is the duly appointed, qualified
and acting Administrator de bonis non with the will
annexed of the Estate of Harry J. Wolf, deceased.
He resides at 3410 S. E. Woodstock Boulevard,
Portland, Oregon, and has his place of business at
900 S. W. First Avenue, Portland, Oregon. The
return for the period here involved was filed by
Harry J. Wolf with the Collector of Internal Revenue
for the District of Oregon.

II.

The respondent is the duly appointed, qualified
and acting Commissioner of Internal Revenue of

the United States and is hereinafter referred to as the "Commissioner."

III.

The taxes in controversy are income and victory taxes for the calendar year 1943.

IV.

Nature of Controversy

For many years prior to and during the taxable year before the court Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf were doing business as co-partners under the name and style of Alaska Junk Company. During the years 1942 and 1943 Alaska Junk Company was engaged in the business of buying, selling and generally dealing in junk, pipe, tools, machinery, hardware, scrap and other metals and, as a part of its regular business, made loans and advances to customers and affiliated enterprises, always treating these loans and advances as "accounts receivable" on its books of account.

Morris Schnitzer, a son of Sam Schnitzer, was engaged in a similar business and in 1941 organized the Oregon Electric Steel Rolling Mills (hereinafter referred to as "Oregon Steel") an Oregon corporation, to manufacture steel products. The company's authorized capital was 2,500 shares having a par value of \$100.00 each, a total capital of \$250,000.00. Upon final distribution of this stock the partners of Alaska Junk Company received 1,249 shares and Morris Schnitzer 625 shares.

From October, 1941, to November, 1943, Alaska Junk Company advanced to Oregon Steel, cash \$327,870.23, paid bills of \$166,340.16 and furnished goods at market prices to the amount of \$347,341.62, making a total of \$841,552.01. All of these items were charged on Alaska Junk Company's books as "accounts receivable" from Oregon Steel. On the books of Oregon Steel these items were entered as "accounts payable." Alaska Junk Company received payments of cash \$114,519.88, received stock of a par value of \$124,900.00 and debenture notes of a face value of \$174,000.00 making total receipts of \$413,419.88, which items were credited to said accounts receivable.

Morris Schnitzer and Alaska Junk Company orally agreed that Morris Schnitzer would bear $\frac{1}{3}$ of the total loss, if any, that might be sustained by Morris Schnitzer and Alaska Junk Company from advances to Oregon Steel over and above the advances credited to stock subscriptions. Alaska Junk Company in turn agreed to bear $\frac{2}{3}$ of any such loss.

Alaska Junk Company was induced to make the advances, sell goods on credit and pay the bills of Oregon Steel upon a promise of early repayment, based upon engineering estimates of minimum earnings of \$50,000.00 per month and a production schedule to begin early in 1943.

In June, 1943, Morris Schnitzer was inducted into military service and Oregon Steel was unable to obtain competent management. As a result of this and other difficulties the operations were unsuccessful.

ful, and in November, 1943, ceased. It was then decided by the stockholders to withdraw from the enterprise, and Oregon Steel stock was then sold. Prior to the sale Oregon Steel issued Alaska Junk Company its promissory note for \$427,843.87, the balance of its account receivable, and issued its note of \$26,829.28 to Schnitzer Steel Products Company (Morris Schnitzer). In exchange for these two notes Alaska Junk Company and Morris Schnitzer received a third mortgage note for \$151,000.00. This compromise resulted in a total loss of \$303,625.90 and by reason of the agreement between Morris Schnitzer and Alaska Junk Company, Alaska Junk Company sustained a loss of \$202,350.60, which was charged off as a bad debt.

On the partnership's return for 1943 a deduction of the \$202,350.60 was claimed as a bad debt. It is this amount which the Commissioner has disallowed as a deduction. The Commissioner's contention was upheld by the Tax Court of the United States and petitioner submits that in making its determination the Tax Court was in error.

V.

The petitioner designates the following points on which he intends to rely on appeal to the United States Court of Appeals for the Ninth Circuit from the decision heretofore entered by the Tax Court of the United States:

1. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the part-

nership in which petitioner's transferror was a partner was not deductible as a bad debt in computing net income subject to taxation.

2. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the partnership in which petitioner's transferror was a partner was not a bad debt.

3. The Tax Court erred in holding that all of the advances, including said sum of \$202,350.60, of the partnership in which petitioner's transferror was a partner were contributions to capital.

4. The Tax Court erred in not finding and holding that all of said sum of \$202,350.60 was a loan made by the partnership in which petitioner's transferror was a partner.

5. The decision entered by the Tax Court herein is not supported by the evidence, is contrary to the evidence and is in disregard of it.

6. The Tax Court erred in determining that there was a deficiency in income and victory taxes for the calendar year 1943 due from the above named petitioner.

Wherefore, the petitioner petitions that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit; that a copy of the record on review be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing and that appropriate action

be taken by said Court to review and correct the decision of the Tax Court which petitioner submits is erroneous.

/s/ ROBERT T. JACOB,
/s/ RANDALL S. JONES,
Attorneys for Petitioner.

Received and filed Jan. 4, 1950, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION
FOR REVIEW

To: Charles Oliphant, Chief Counsel for the Bureau
of Internal Revenue.

You will please take notice that on the 4th day of January, 1950, the petitioner above named filed with the Clerk of the Tax Court of the United States at Washington, D. C. a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore entered in the above entitled proceeding.

A copy of said Petition for Review as filed is attached hereto and served upon you.

/s/ ROBERT T. JACOB,
/s/ RANDALL S. JONES.

Receipt of copy acknowledged.

Received and Filed Jan. 9, 1950, T.C.U.S.

The Tax Court of the United States
Washington

[Title of Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers and proceedings before The Tax Court of the United States as set forth in the "Designation of Record" except the original exhibits 1-27, incl., 28, 30, 31, 33-36, incl., 65, 66, 72-79, incl.; A-Z, AA-HH, incl., on file in my office as the original record in the proceeding and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 23rd day of January, 1950.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12472. United States Court of Appeals for the Ninth Circuit. Estate of Harry J. Wolf, Deceased, by Monte L. Wolf, Administrator, de bonis non with the will annexed of said estate, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed February 7, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit.

T. C. Docket No. 14208

SAM SCHNITZER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14209

ESTATE OF HARRY J. WOLF, Deceased, by
MONTE L. WOLF, Administrator de bonis
non with the will annexed of said Estate,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14278

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14279

BLOSSOM M. GOLDSTEIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

T. C. Docket No. 14280

CHARLOTTE C. COHON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

T. C. Docket No. 14372

ESTATE OF JENNIE WOLF, Deceased, by
MONTE L. WOLF, Administrator de bonis
non with the will annexed of said Estate,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION TO CONSOLIDATE APPEALS

The above named petitioners on review and each of them, acting by and through their attorneys of record, hereby move this court to consolidate the above entitled proceedings for purposes of the printed record on appeal, the briefing, the hearing,

the argument, the decision and for all other purposes connected with the final disposition of said proceedings on review.

This motion is based on the grounds that all of the above entitled proceedings were consolidated for trial below in the Tax Court, that the Tax Court made but one set of findings of fact and rendered but one opinion in connection with all of these cases, that each of these cases involves the same facts, that each of the petitioners on review was either a partner or is now the transferee of a decedent who was a partner in a partnership known as the Alaska Junk Company, that the sole question for decision concerns the deductibility of a bad debt by said Alaska Junk Company, and that the decision on this single point is determinative of the income tax liability of each of said partners or said transferees of partners who are the petitioners herein.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES,

917 Public Service Building,
Portland 4, Oregon.

I, Randall S. Jones, being on oath first duly sworn, depose and say:

That on the 13th day of February, 1950, I served the foregoing Motion to Consolidate Appeals upon Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, by on said day depositing a duly certified copy thereof in the United

States mails with full postage and registration charges prepaid, addressed to Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, Internal Revenue Building, Washington, D. C. Said papers were deposited in the United States mails at the Federal Post Office, S. W. Sixth and Main Streets, Portland 4, Oregon.

/s/ RANDALL S. JONES.

Subscribed and sworn to before me this 13th day of February, 1950.

[Seal] /s/ JACQUELINE MOHLAND,
Notary Public for Oregon.

My commission expires: 9-22-52.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ HOMER BONE,

/s/ WM. E. ORR,
U. S. Circuit Judge.

[Endorsed]: Filed Feb. 15, 1950.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON WHICH
PETITIONERS INTEND TO RELY

The petitioners on review hereby enumerate the points on which they intend to rely on appeal and which are as follows:

1. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the partnership in which petitioners were partners was not a bad debt and not deductible in computing the net income of said partnership and petitioners' net income subject to taxation for the taxable year 1943.

2. The Tax Court erred in holding that the total, or any amount in excess of \$125,000.00, representing bills paid for, cash advanced to, and goods sold to Oregon Electric Steel Rolling Mills by the partnership in which petitioners or their transferrors were partners, constituted a contribution to the capital of said Oregon Electric Steel Rolling Mills.

3. The Tax Court erred in not finding and holding that all and every part of said sum of \$202,350.60 was a debt owed to the partnership in which petitioners were partners.

4. The decision entered by the Tax Court herein is contrary to the law, the Tax Court's findings of fact, and the evidence; and is not supported by said findings of fact or the evidence and is in disregard of both said findings of fact and the evidence.

5. The Tax Court erred in failing to include in its findings material facts clearly established by the evidence which further show that the bills paid, cash advanced and goods sold to Oregon Electric Steel Rolling Mills constituted an indebtedness owed to the partnership.

6. The Tax Court erred in admitting respondent's exhibits O, P, Q, U, V, AA, FF, GG and HH over objections of petitioner for the reasons set forth respectively on pages 120, 121, 122, 129, 134, 137, 495, 589-591, 621 and 636, 639 and 640 of the *Report's* Transcript of the Proceedings before said court.

7. The Tax Court erred in receiving oral testimony adduced by respondent over objections of the petitioners as set forth in those portions from the Reporter's Transcript of the Proceedings before said court which the petitioners have designated for inclusion in the Printed Record.

8. The Tax Court erred in sustaining objections of the respondent to questions asked by petitioners and to oral testimony offered by petitioners, which questions, objections and rulings thereon are set forth in those portions from the Reporter's Transcript of the Proceedings before said court which

the petitioners have designated for inclusion in the Printed Record.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES,
917 Public Service Bldg.,
Portland 4, Oregon.

I, Randall S. Jones, being on oath first duly sworn, depose and say:

That on the 13th day of February, 1950, I served the Statement of Points on which Petitioners Intend to Rely upon Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, by on said day depositing a duly certified copy thereof in the United States mails with full postage and registration charges prepaid, addressed to Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, Internal Revenue Building, Washington, D. C. Said papers were deposited in the United States mails at the Federal Post Office, S. W. Sixth and Main Streets, Portland 4, Oregon.

/s/ RANDALL S. JONES.

Subscribed and sworn to before me this 13th day of February, 1950.

[Seal] /s/ JACQUELINE MOHLAND,
Notary Public for Oregon.

My commission expires: 9-22-52.

[Endorsed]: Filed Feb. 15, 1950.

